

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CRIMINAL NO. 1:06CR31

UNITED STATES OF AMERICA

vs.

MICHAEL DALE HONEYCUTT

)
)
)
)
)
)
)
)
)
)

ORDER

THIS MATTER is before the Court on Defendant's motion for reconsideration of the prior Order filed January 18, 2008, in which the Court denied Defendant's *pro se* "Notice of Appeal (in the Alternative)," with attached "Out of Time Notice of Appeal," and referred his motion for the appointment of appellate counsel to the Fourth Circuit.

In this motion, Defendant advises the Court that the heading on his previous "Notice of Appeal (in the Alternative)" was incorrect and should have been styled as a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 on the grounds that he received ineffective assistance of counsel due to counsel's failure to file an appeal on Defendant's behalf. He moves the Court for leave to withdraw his notice of appeal so that he may pursue relief pursuant to § 2255 which, when

granted, would provide him with a direct appeal of his conviction and sentence. The Defendant may wish to reconsider such a protracted procedural maneuver to obtain a direct appeal when, in fact, a direct appeal is now pending before the Fourth Circuit. In any event, because such appeal has been filed with the Fourth Circuit, this Court has no jurisdiction to grant Defendant the relief he seeks; instead, the Defendant should file an appropriate motion to withdraw his appeal with the Fourth Circuit Court of Appeals.

IT IS, THEREFORE, ORDERED that the Defendant's motions for reconsideration and for leave to withdraw his appeal are **DENIED**.

The Clerk is directed to make available a copy of this Order to the Fourth Circuit Court of Appeals.

Signed: February 27, 2008



Lacy H. Thornburg
United States District Judge

